

IN RE: PETITION FOR SPECIAL HEARING  
W/S York Road, 310' S of  
the c/l of Thelma Road  
(2306 York Road)  
8th Election District  
3rd Councilmanic District  
Penn Advertising of  
Baltimore, Inc.  
Petitioner

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 89-88-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve an extension of the special exception and zoning variances granted in Case No. 86-520-XA on June 30, 1986 as more particularly described in Petitioner's Exhibits 1 through 5.

The Petitioner, by Joseph A. DiPaola of J.R. Brothers, Inc., Contract Lessee of the subject property, appeared, testified and was represented by Andrew Janquitto, Esquire. Also appearing and testifying on behalf of the Petitioner were Walter T. Parr and V. Robert Sartor. There were no Protestants.

Testimony indicated that the subject property, known as 2306 York Road, is zoned B.R. and is improved with a restaurant known as the Turf Inn. A special exception granted in Case No. 4749-X and amended in Case No. 86-520-XA permitted the erection of two outdoor advertising signs pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) as depicted in Petitioner's Exhibit 3A through F. The Petitioner and J. R. Brothers, Inc., trading as the Turf Inn, which is the successor company to Poster and Kleiser, the original parties of title to the special exception granted in Case No. 86-520-XA, have requested an extension of the special exception granted in said case due to the fact that the original outdoor advertising signs established in Case No. 4749-X have not yet been moved to the

new location proposed in Case No. 86-520-XA as shown in Petitioner's Exhibit 5. The Zoning Commissioner in that Case found that the relocation of the two signs was appropriate and complied with all the requirements of Section 502.1 and Section 307 of the B.C.Z.R. The issue in the instant case is whether or not the special exception to relocate the advertising signs can be continued to allow the Petitioner time to complete the construction for the relocation.

The facts and evidence presented indicate that the relocation of the outdoor advertising signs was not accomplished during the previous two years due to the financial difficulties of Penn Advertising's successors in title, and ongoing delays with improvements proposed for property on High View Avenue owned by J. R. Brothers, Inc. which necessitated the original movement and relocation of the existing advertising signs. There was testimony from all of the witnesses for the Petitioner concerning the relocation of the outdoor advertising signs and the witnesses recanted their testimony concerning the requirements of Section 502.1.

It is clear that the B.C.Z.R. permits the use proposed in a B.R. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the par-

ticular location described by Petitioner's Exhibit 5 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

The Petitioner's request for an extension of the variances granted in Case No. 86-520-XA is unnecessary due to the fact that the variances requested in said case were granted and those variances run with the land. Therefore, the request for an extension of the variances granted in Case No. 86-520-XA is hereby dismissed as moot.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be granted as hereinafter modified.

WHEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of October, 1988 that the Petition for Special Hearing to approve an extension of the special exception granted in Case

No. 86-520-XA on June 30, 1986 be and is hereby GRANTED until June 30, 1990; and,

IT IS FURTHER ORDERED that the request for an extension of the variances granted in Case No. 86-520-XA be and is hereby DISMISSED.

*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner for  
Baltimore County

JRH:bjs

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
294-3333

J. Robert Haines  
Zoning Commissioner

October 4, 1988

Andrew Janquitto, Esquire  
Jefferson Building, Suite 300  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
W/S York Road, 310' S of the c/l of Thelma Road  
(2306 York Road)  
8th Election District - 3rd Councilmanic District  
Penn Advertising of Baltimore, Inc. - Petitioner  
Case No. 89-88-SPH

Dear Mr. Janquitto:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner  
for Baltimore County

JRH:bjs

cc: Joseph A. DiPaola  
2123 Pot Spring Road, Timonium, Md. 21093

Pec. le's Counsel

File

#### PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

an extension of the special exception and zoning variances

granted on June 30, 1986, in Case 86-520-XA.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

LEGAL OWNER(S):

J. R. BROS., INC., T/A TURF INN

(Type or Print Name)

*Joseph A. DiPaola*

Signature

2306 York Road

Address

Timonium, Maryland 21093

City and State

Attorney for Petitioner:

T. ROGERS HARRISON

(Type or Print Name)

*T. Rogers Harrison*

Signature

Suite 300, Jefferson Building

Address

105 W. Chesapeake Avenue

Towson, Maryland 21204

City and State

Attorney's Telephone No.: 828-1335

Legal Owner(s):

Penn Advertising of Baltimore, Inc.

(Type or Print Name)

*Andrew Janquitto*

Signature

(Type or Print Name)

Signature

2101 Myrtle Street

Address

Phone No.

828-1335

SCRANTON, PA 18510

City and State

Name, address and phone number of representative to be contacted

T. ROGERS HARRISON

Suite 300, Jefferson Building

Address

105 W. Chesapeake Avenue

Towson, Maryland 21204

City and State

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 27th day of Sept. 1988 at 9 o'clock

ESTIMATED LENGTH OF HEARING 15 MIN.

AVAILABLE FOR REVIEW MON. (TUES. / WED.) - NEXT TWO MONTHS

ALL OTHER

REVIEWED BY: *J. Robert Haines* DATE 6-30-88

S.C.O. - No. 1

(over)

#### PROPERTY DESCRIPTION

BEGINNING AT A POINT LOCATED ON THE WEST SIDE OF YORK ROAD (80 FEET WIDE), 310 FEET SOUTH OF THE CENTERLINE OF THELMA AVENUE (40 FEET WIDE), AND 60 FEET FROM THE CENTERLINE OF YORK ROAD AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1.) NORTHWESTERLY AND ALONG THE SOUTH SIDE OF A PAPER STREET KNOWN AS HIGHVIEW AVENUE (30 FEET WIDE) A DISTANCE OF 60 FEET TO A POINT, THENCE 2.) SOUTHWESTERLY AND AT A RIGHT ANGLE A DISTANCE OF 15 FEET TO A POINT, THENCE 3.) SOUTHEASTERLY AND AT A RIGHT ANGLE A DISTANCE OF 60 FEET TO A POINT, THENCE 4.) NORTHEASTERLY AND AT A RIGHT ANGLE A DISTANCE OF 15 FEET TO THE BEGINNING POINT.

#### CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 8th  
Posted for: Special Hearing  
Petitioner: Penn Advertising of Baltimore, Inc.  
Location of property: W/S of York Road 310' S of Thelma Rd.  
Location of signs: West side of York Road in front of subject property  
Remarks: 1. 2. 3.  
Posted by: J. R. Haines  
Number of signs: 1

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
W/S York Rd., 310' S c/l Thelma : OF BALTIMORE COUNTY  
Rd. (2306 York Rd.), 8th Dist.  
PENN ADVERTISING OF BALTIMORE, : Case No. 89-88-SPH  
INC., Petitioner

#### ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 304, County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 11th day of August, 1988, a copy of the foregoing Entry of Appearance was mailed to T. Rogers Harrison, Esquire, Suite 300, Jefferson Bldg., 105 W. Chesapeake Ave., Towson, MD 21204, Attorney for Petitioner; and J. R. Bros., Inc., T/A Turf Inn, 2306 York Rd., Timonium, MD 21093, Lessee.

*Peter Max Zimmerman*  
Peter Max Zimmerman



# CERTIFICATE OF PUBLICATION

TOWSON, MD., September 2, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept. 1, 1988

PO# 04078  
REG# M18920  
\$39.38

THE JEFFERSONIAN,

Publisher

# "DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., September 2, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Aug. 21, 1988

TOWSON MILLS TIMES,

Publisher

PO# 04077  
REG# M18921  
\$60.98

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

Date: 9/5/88

J. R. Bros., Inc., t/a  
Turf Inn  
2306 York Road  
Timonium, Maryland 21053

Re: Petition for Special Hearing  
CASE NUMBER: 88-88-SPH  
W/S York Road, 310' S c/l Thelma Road  
(2306 York Road)  
8th Election District - 3rd Councilmanic  
Petitioner(s): Penn Advertising of Baltimore, Inc.  
Lessee: J. R. Bros., Inc., t/a Turf Inn  
HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 28, 1988 at 9:00 a.m.

Dear Sirs:

Please be advised that \$115.36 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before the hearing is scheduled to begin.

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE-REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
No. 059127  
DATE 9/25/88 ACCOUNT RCI-615 CCO  
AMOUNT \$ 115.36  
RECEIVED Penn Advertising  
FOR Posting Advertising 9/25/88  
B 015\*\*\*\*\*11536: 88-88-SPH  
VALIDATION OR SIGNATURE OF CASHIER  
WHITE-COPIES: PUR-Agency YELLOW-CUSTOMER

post set(s), there each set not

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

August 4, 1988

# NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing  
CASE NUMBER: 88-88-SPH  
W/S York Road, 310' S c/l Thelma Road  
(2306 York Road)  
8th Election District - 3rd Councilmanic  
Petitioner(s): Penn Advertising of Baltimore, Inc.  
Lessee: J. R. Bros., Inc., t/a Turf Inn  
HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 28, 1988 at 9:00 a.m.

Special Hearings To approve an extension of the Special Exception and Zoning Variances granted on June 30, 1986, in Case 88-520-XA.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

cc: Penn Advertising of Baltimore, Inc.  
J. R. Bros., Inc., t/a Turf Inn  
T. Rogers Harrison, Esq.  
File

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

J. Robert Haines  
Zoning Commissioner

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J. ROBERT HAINES  
Zoning Commissioner of  
Baltimore County

# PETITIONER'S EXHIBIT 1

Lease Agreement

This Lease, made between Foster & Kleiser Division of Metro Media, Inc.

after this in the Lease agreement referred to as "Lessor", and J.R. Brothers, Inc. a Maryland close corporation, referred to in the Lease agreement as Lessee, is made this 12th day of October, 1985.

1. The Lessor leases and demises to Lessee the property known Timonium Heights. Lot Block 2. W.F.C. Liber 5. folio 5. 48' x 111'. now improved by a double faced outdoor advertising structure owned by Lessor. (Flat of Property- Exhibit A- Attached)
2. The purpose of this Lease is to allow the Lessee to construct a parking lot for Lessee's restaurant and lounge, known as the Turf Inn, now existing on the adjacent lot, south and contiguous to Lessors property. No other use by Lessee shall be permitted.
3. The term of this Lease shall be Ten (10) years, commencing when Lessee acquires the required permits and terminating ten years thereafter. The Lessee shall be given the right of first negotiation commencing 120 days and expiring 60 days before the termination of this lease. The rent shall commence when Lessee has received all necessary permits for relocation of Lessors sign structure and for Lessee's parking facilities.
4. The annual rent of this Lease shall be Three Thousand, One Hundred dollars per year and paid Quarterly in advance. The rent shall be adjusted every three years, beginning from the date the lease commences, by the percent increase in the Consumer Price Index. For the area including Baltimore, MD. The rent shall not be adjusted downward and in no event shall be less than Three Thousand and One Hundred (\$3100.00) dollars per year.
5. Lessee shall, at its sole expense, but with the permission and cooperation of Lessor, acquire the necessary state and local permits to move and relocate Lessors sign structure on the property

The sign structure to be moved to the area specified on Exhibit A (attached page 4) or to a space acceptable to Lessor. The cost of moving the sign structure will be borne by Lessor. The Lessee's obligations under this lease are strictly contingent upon the granting of such sign relocation approvals by the appropriate authorities.

6. Lessee agrees to pay any increase in real property taxes and assessments and increases in municipal assessments caused by its use of the Leased premises.

7. The rent shall commence when Lessee has received all necessary permits for relocation of Lessors sign structure and for Lessee's parking facilities. Lessor shall relocate its signs upon receipt of required permits for such relocation. Lessee agrees to file for and pursue all permits for the parking facility and lessors sign structure concurrently, and under best efforts.

8. Lessee agrees that he, his employees- or agents or any person acting on or for his behalf shall not place or maintain any object or structure that would impair the view of Lessors sign structure. If such an impairment occurs the Lessor may remove the object or impairment, charging the cost of removal to Lessee, or Lessor may cancel this Lease agreement by giving Lessee Sixty (60) days notice to remove the impairment or surrender and return possession of the property to Lessor.

9. Lessor reserves the right to enter the leased premises to change advertising posters on Lessors sign structure. Lessor agrees to maintain its advertising structure in good and serviceable condition and to bear the cost of the repairs and maintenance, and to make repairs, renovations and replacements to such structure. Lessee agrees and warrants that it will operate the leased premises in compliance with the law and will bear all costs of repairs and maintenance of the leased premises.

10. Lessee agrees and shall save Lessor harmless from all damage to persons or property by reasons of accidents resulting from the negligent acts of its agents, employees or operation of its parking area, or by reason of operation, on the leased property.

Lessee shall acquire and maintain, during the term of this lease sufficient insurance to protect and indemnify Lessor against any and all such claims as may arise by virtue of its parking facility on Lessor's property, and shall provide Lessor with a Certificate of Insurance naming Lessor as an additional insured.

11. Lessee agrees that this lease may not be transferred or assigned or the leased property sub-let with out express, written approval of Lessor.

12. Lessor agrees to display no advertising directly competitive to Lessee's restaurant business on the adjacent property. Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the demised premises free from eviction or interference by Lessor if Lessee pays the rent when due and other charges provided for in this Lease. Lessee agrees to peaceably and quietly surrender possession of the property to Lessor upon expiration of the Lease term and any improvements placed or constructed by Lessee on the property except movable trade fixtures.

13. This lease shall constitute the sole agreement of Lessor and Lessee regarding the Leased premises. Neither Lessee or Lessor will be bound by any statements warranties or promises, oral or written, unless it is specifically set out in this Lease.

14. The term Lessor as used in this Lease shall include Lessors, and, the term Lessee shall include Lessees. This lease is binding upon the heirs, assigns, executors and successors of Lessor and Lessee as set out in this Lease. The Lessor and Lessee represent that they are authorized to execute this Lease.

Witness

T. Rogers Harrison

Witness

Lessee: J.R. Brothers, Inc.

Raymond DiPaola Pres.

Lessor: Foster & Kleiser, Div.  
of Metro Media

Robert A. Mann

# ADDENDUM TO LEASE AGREEMENT

The parties reaffirm all the provisions of their lease agreement dated October 12, 1985, and further agree for consideration as set forth in that lease agreement signed simultaneously herewith to the following:

1. That the parties agree to an option in the lease to renew the lease for an additional term of five years on the same terms and conditions set forth in the lease agreement of October 12, 1985.
2. That the lessor agrees that the lessee may construct improvements on the premises subject to reasonable approval of the plans by the lessor with an increased rental to be negotiated by the parties not to exceed fair market value on similar leases in the same area.
3. The parties mutually agree that the lessee may construct an entrance to their existing facilities which opens into the demised premises (parking lot).

J. R. BROTHERS, INC.

T. Rogers Harrison by Raymond DiPaola Pres.  
"Lessee"

Robert A. Mann  
V.P.  
"Lessor"







